

POLITICAL HISTORY, 1920-1936

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of the population. Several of these sects possessed a local predominance in some part of the Republic: the Maronites in the north, the Druzes in the south, the Sunnis in the coastal towns of Beirut, Tripoli and Saida, and the Shi'is in the Bika' and the extreme south. The consequences which are likely to flow from such a situation are clear. The political life of the Republic was deeply affected by the struggle for equality or superiority between a number of communities, none of them so strong as to be able to dominate all the rest. Sectarian loyalties and sectarian jealousies thus continued and perhaps strengthened themselves. In addition, the domination of the spiritual leaders over the members of their communities was perpetuated; the Maronite Patriarch in particular wielded an incalculable influence over the political life of the country. [162] [165] [186]

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The importance of communal differences in Lebanon was recognized by the Mandate. Article 8 stated the necessity of guaranteeing the most complete liberty of conscience and worship; the equal treatment of all inhabitants irrespective of differences of race, religion and language; and the right of communities to maintain their own schools. Article 6 required the Mandatory Power to respect the personal status and religious interests of the different sections of the population. These guarantees were reaffirmed in the Lebanese Constitution, promulgated in 1926, Article 9 of which declared: 'Liberty of conscience is absolute. In rendering homage to the Most High, the State respects all confessions and guarantees and protects the free exercise of them, on condition that no harm is done to public order. It guarantees equally to populations belonging to every rite respect for their personal status and their religious interests.' 641 642 648

These guarantees were respected by the Mandatory Power to a considerable extent. For example, the traditional jurisdictions of the communal courts were maintained in some matters of personal status, although a large proportion of such matters were transferred to the civil courts. An attempt was made in 1936 to define the whole position of the communal jurisdictions. The High Commissioner issued a decree in which the historic communities were given explicit legal recognition. Their statutes were given the force of law, and 671

671 the application of them placed under the protection of the law and the control of the public authorities. They were to possess corporate personality, and to be represented in their relations with the public powers by their spiritual heads. Members of the communities would be obliged to conform to the communal statutes in matters of personal status, and to the civil law where the statutes of the communities were silent. Anyone who attained his majority would be at liberty to leave his community and enter a new one; and provision was made for individuals who were not members of any religious community. This decree was opposed by religious authorities, and in 1938 a new one was issued modifying it at certain points; but this also aroused opposition from several sides.

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641 In the political sphere the relations between the communities were defined in the Constitution, which formulated two principles. First, all Lebanese citizens were equal before the law, possessed of the same rights and duties, and equally admissible to all public offices without any distinction (Articles 7 and 12). Secondly, Article 95 laid it down that, at least provisionally, the communities should be equitably represented in public offices and in the Ministry, in so far as that did not detract from the welfare of the State.

642 The whole political organization of the State was permeated by these principles, but by the second more than the first. It has already been mentioned that the President of the Republic was always a Christian, and with the exception of the first President a Maronite. To counter-balance this, the Prime Minister was normally a Sunni Moslem, and the other Ministries were distributed among the different communities as equitably as possible. The Chamber of Deputies was so constituted as to represent the communities roughly in proportion to their numerical strength; every district elected a number of deputies belonging to the different communities living in it, but every deputy was elected not only by his co-religionists but by the whole electorate of the district. The maintenance of the balance between the communities was an important and often the most important consideration in the making of appointments in central and local administration alike.

MUNICIPAL GOVERNMENT IN THE LEBANON

1. THE GENERAL MUNICIPAL CODE

63/ The history of municipal government in the Republic of Lebanon goes back only to the Ottoman Municipal Law of 1877¹ which was largely based upon the Code Napoleon. The transition to the new municipal code promulgated in 1922 after the establishment of the French mandatory regime was comparatively simple. The general framework remains much the same with minor differences in procedure, particularly in the degree of centralisation.

63/ With only 120 incorporated municipalities among the 1500 odd towns and villages of Lebanon and with only eight of these with a population of more than ten thousand, no very elaborate code is required. The only large city, the capital, Beirut, with a population of 150,000, like the capital of France, is organized under a separate law. All the other municipalities of Lebanon are chartered under Arrêté No. 1208 of March 10, 1922² while the hundreds of unincorporated villages are governed through the mukhtars under the *Loi des Mukhtars* of January 13, 1928³.

63/ Municipal affairs are supervised and controlled by the national government through the Ministry of the Interior by means of its administrative officers in the various levels of local government. The Republic is divided into five principal administrative districts, each headed by an appointed administrator (*muḥāsif*). The districts are in turn sub-divided into eighteen *kada's* each under the administrative control of an appointed *kaimmakām*⁴. Through French counsellors attached to the more important administrative posts the entire system is brought under the directing authority of the French High Commissioner.⁵ All these officials exercise a constant and vigilant surveillance over the municipalities within their jurisdiction with powers even more extensive than those of the prefects in France, thus bringing municipal government well with in the highly centralised system of national government.

1 George Young, *Corps de Droit Ottoman*, (The Clarendon Press, Oxford, 1905), Vol. 1, p. 49.

2 *Recueil des Arrêts et Décisions du Grand Liban, 1920-1921*, (Imprimerie des Lettres, Beyrouth, 1925), p. 262.

3 *Journal Officiel de la République Libanaise*, (Imprimerie des Lettres, Beyrouth), No. F. 428, p. 4.

4 *Jour. Off. Lib. cit.* No. F. 379, p. 2. Formerly the Lebanon was divided into 11 *majda's* (districts).

5 All decisions and arrêts of the Administrator must be viséd by the French counsellor. Arrêté No. 1208, Art. 95.

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be punished with imprisonment not exceeding 12 months or a fine not exceeding 90 pounds, or with both such penalties.... The cost incurred in making good any damage.... shall be borne by the person convicted" (Article 35).

"Any person who, without permission... takes or draws off any water in an irrigation area... shall be punished with imprisonment not exceeding six months or a fine not exceeding JD 45 or with both penalties." The costs for restoring the area to its original condition shall be charged to the person convicted (Article 36).

"Imprisonment not exceeding one month or a fine not exceeding JD 10 or both such penalties" will be inflicted on whosoever "by any negligent act or omission damages, alters or enlarges any government irrigation works or interferes with the flow of water... causes damage to roads, buildings, irrigation works... belonging to the government or to private individuals or societies, corrupts or fouls the water, destroys, injures, defaces or removes any land, level mark or water gauge, obstructs any government official in the execution of his duties, disobeys provisions of published notices or contravenes any provision of this law for which no specific penalty is provided" (Article 37).

In the event that it is impossible to ascertain the author of any punishable offense, the Collective Punishments Law of 1928 shall be enforced (Article 38). The director may, moreover, "deduct from the supply of water to which such land may be entitled.....such amount as he may estimate... equivalent to the benefit wrongfully acquired" (Article 39).

"Any person who willfully gives false evidence in proceedings under this law...shall be punished with the penalties provided for the giving of false evidence in the Penal Code" (Article 40). Punishments contemplated under this law shall not exclude proceedings against any offender under the provisions of the Penal Code (Article 41).

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While the country of Lebanon is not a Moslem country, as in all countries of the Ottoman Empire the articles of the M-

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Jelle code governing water use were in force until Lebanon was placed under French mandate.

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French water legislation in Lebanon is based on two fundamental orders called arrêts. The first of these, Arrêt No. 144/3 dated 10 June 1925, delimited and defined public domain in the state of Greater Lebanon and Latakia (territory of the Alawites) which was extended, by Arrêt No. 299/3 dated 6 November 1925, to all territories under French mandate, both Lebanon and Syria. The second, Arrêt No. 320/3 of 26 May 1926, governs the conservation and utilization of waters of the public domain. Article 24 of Arrêt No. 320/3 has been amended by legislative Decree No. 288, dated 28 November 1942.

Since it does not appear that, from the date of its complete independence, new water laws have been enacted by the Lebanese government, these laws are still in force.

According to these two above-mentioned bills, waters are governed as follows:

Decree 144/3 of public domain comprises 26 articles and four chapters. Articles 1 to 4 define public domain. Articles 5 to 13 delimit it, Articles 14 to 21 refer to temporary occupation thereof while Articles 22 to 26 contain general provisions.

Article 2, which is fundamental, declares that water belongs to the public domain. It reads:

"The following shall be part of the public domain, except where Article 3 of this decree applies: the sea coast; marshes and salt ponds; water courses of all types within the limits prescribed for the height of water running between banks before overflowing; ground waters and springs of all types, embankments along waterways; lakes, ponds and lagoons; waterfalls which can produce power; navigation, irrigation, drainage and land reclamation canals and their embankments; aqueducts when such works are constructed for public use; and sea dykes and dams controlling rain water."

Also included as part of the public domain are military construction works, telephone and telegraph lines, all communication facilities and ports, water power works, works for the transportation of electric power and any public works constructed for their use.

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This decree also prescribes that public domain lands and waters shall be defined for all countries under mandate by special committees and that the boundaries of the public domain shall be definitively set forth in a decree issued by the head of the government.

Finally, the decree envisages the possibility of authorizing, with regard to the public domain:

1. concessions or leases for temporary occupation for a term renewable by tacit agreement and on royalty;
2. concessions or leases for longer periods of occupation which must be renewed every five years.

Every year, a list of all permits granted shall be drawn up by the Public Works Service. Fines are prescribed for contraventions.

Conservation and Use of Waters of the Public Domain

Decree No. 320 dated 26 May 1926 relating to the conservation and use of public domain waters is the basic water law. It is composed of 64 articles divided into nine chapters.

Water Policing and Conservation

312 Articles 1 and 2 prohibit the placing of any impediment to bar the free flow of waters of the public domain or the trespassing on borders of waterways, marshlands, ponds, lagoons, water springs and headwaters, lakes, etc. as well as in the upper reaches of aqueducts, water conduits, irrigation canals, drainage and reclamation works, the erection of which is declared to be in the public interest.

Also prohibited is the cleaning, deepening, straightening, altering or regulating of waterways, exploratory surveying or tapping of ground or artesian waters and, generally speaking, undertaking any type of work which may affect the flow or regime of waters belonging to the public domain. However, the digging of non-artesian wells down to a depth of less than 150 meters may be undertaken by private landowners.

Article 2 prohibits the destruction or damage of hydraulic works and their appurtenances and the fouling or pollution